IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4714 of 2006

(converted from Civil Revision Application No.1420 of 1999)

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GOSWAMI MADHAVGIRI SHAMBHUGIRI AND ANOTHER
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MR JD AJMERA for Petitioners.
MR LB DABHI, AGP for Respondent No.1.
RULE SERVED for Respondent No.2.
MR HC PATEL for Respondent No.3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 13/04/2007

ORAL JUDGMENT

1) In this petition, the petitioners have challenged the legality and validity of an order dated 19th February, 1998 passed by learned Joint

Civil Judge (S.D.), Bhavnagar below Exh.5 in Regular Civil Suit No.228/1997 as upheld by an order dated 22nd June 1999 passed by learned District Judge, Bhavnagar in Civil Misc. Appeal No.61/1998.

2) The petitioners claim to be the devotees of a temple situated in Village-Koliyak, Taluka-Ghoga, District-Bhavnagar known as Nishkalank Mahadev Mandir. They claim to be in possession of yet another temple constructed in Survey No.208 which is near the aforesaid temple. They claim to be in possession of land admeasuring 10 Acres and 27 Gunthas out of Survey No.208 of the said village. It is the case of the petitioners that they have been allotted said lands by erstwhile ruler of Bhavnagar State and that since more than 100 years their forefathers have been in possession of the land in question.

3) On the other hand, the case of the State Government is that the land in question is a forest land and that there is no evidence to establish that any part of the land was allotted to the petitioners by the erstwhile ruler of the Bhavnagar State as claimed.

4) In the Civil Suit instituted by the petitioners, learned Civil Judge (S.D.), as well as learned District Judge refused to grant interim injunction against eviction of the petitioners from the land in question.

5) Having heard learned advocates appearing for the parties and having taken into consideration material on record, I find that the petitioners have failed to make out a case for protection of entire land in question. The Courts below have given cogent reasons for not granting interim injunction as prayed for. In exercise of powers under Article 227 of the Constitution of India, I do not find that concurrent factual findings call for any interference. To that extent, therefore, petition must fail.

However, before the Courts below also it was assured on behalf of the State Government that Government neither proposes to demolish nor dispossess the petitioners from the temple itself.

6) Additionally, it does not appear to be seriously in doubt that over and above that temple itself which is in existence since a fairly long time, the petitioners are in possession of a few scattered constructed properties which comprise of their residential quarters and a few make-shift stalls. The case of the petitioners is that a large number of devotees visit the temple year round to pay their prayers. Considering these factual aspects, even while refusing to grant injunction in favour of the petitioners for the entire land in question, it would be just and proper to ensure that the existing structures and possession of the petitioners thereof is not disturbed till the final disposal of the pending suit.

7) Under the circumstances, it is directed that the respondent shall not dispossess the petitioners from the existing temple and the constructed premises nearby situated in the disputed land till the final disposal of the suit. Subject to above protection, remaining prayers of the petitioners are not entertained.

8) I have expressed no opinion on the issues arising in the pending Civil Suit, which will be decided by the learned Judge in accordance with law and the material that may be brought on record. Learned trial Judge may make an endeavour to dispose of the suit preferably within a period of six months. It will be open for the respondents to draw a Panchnama of the existing structures to ensure that there is no further extension. This shall be done after putting the petitioners to notice.

9) With these directions, the petition is disposed of. Rule is made absolute to the above limited extent. No costs.

(Akil Kureshi, J.)

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